No. 96-372

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1996

THOMAS A. COUGHLIN, III, Commissioner, N.Y.S. Department of Correctional Services; LOUIS F. MANN, Superintendent, Shawangunk Correctional Facility,

Petitioners,

against

DAVID GRIFFIN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

May the State coerce participation in the religious exercises propounded by the Twelve Steps of Alcoholics Anonymous?

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BRIEF IN OPPOSITION TO THE PETITION

SUMMARY OF THE ARGUMENT

In its Opinion rendered June 11, 1996, the New York Court of Appeals held that "under the Establishment Clause of the United States Constitution's First Amendment, an atheist or agnostic inmate may not be deprived of eligibility for expanded family visitation privileges for refusing to participate in the sole alcohol and drug addiction program at his State correctional facility when the program necessarily entails mandatory attendance at and participation in a curriculum which adopts in major part the religious-oriented practices and precepts of Alcoholics Anonymous (hereinafter A.A.)" Petitioners' Appendix, page 3a.

The New York Court of Appeals held that the "essential major components, indeed, the heart" of the State prison program at issue was the "A.A. Twelve Step[1] manifesto itself

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[1]"The Twelve Steps Of Alcoholics Anonymous" reads as follows:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable.

2. Came to believe that a power greater than ourselves could restore us to sanity.

3. Made a decision to turn our will and our lives over to the care of God *as we understood Him.*

4. Made a searching and fearless moral inventory of ourselves.

5. Admitted to God, to ourselves and to another human being the exact nature of our wrongs.

6. Were entirely ready to have God remove all these defects of character.

7. Humbly asked Him to remove all of our shortcomings.

8. Made a list of all persons we had harmed, and became willing to make amends to them all.

(continued...)

and inmate participation in the group sessions conducted by A.A. and N.A. volunteers utilizing the A.A. *modus operandi*." Petitioner's Appendix, pages 8a-9a. The Court below then held that "a fair reading of the fundamental A.A. doctrinal writings discloses that their dominant theme is unequivocally religious . . .[and] reflect[s] the traditional elements common to most theistic religions." Petitioner's Appendix, page 9a. The Court below continued, "beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the A.A. fellowship entails engagement in religious activity and religious proselytization." Petitioner's Appendix, pages 11a-12a. The Court below had no trouble concluding that the use of the A.A. Twelve Step program by New York's prison system "as an essential component of an exclusive, compulsory attendance . . . [p]rogram violates the Establishment Clause." Petitioner's Appendix, page 16a.

(...continued)

8. Made a list of all persons we had harmed, and became willing to make amends to them all.

9. Made direct amends to such people wherever possible, except when to do so would injure them or others.

10. Continued to take personal inventory and when we were wrong promptly admitted it.

11. Sought through prayer and meditation to improve our conscious contact with God, *as we understood Him*, praying only for knowledge of His will for us and the power to carry that out.

12. Having had a spiritual awakening as a result of these steps, we tried to carry this message to alcoholics, and to practice these principles in all our affairs.

(emphasis in original).

Petitioners, however, want this Court to disregard fundamental Establishment Clause jurisprudence in order to save New York State's penology of religious indoctrination. They are asking this Court to approve a new civic religion[2] of secular spiritualism which demands recognition and acceptance of a distinction between religious belief in "God", on the one hand, and secular belief in a spiritual "Higher Power" expressed in traditional religious terms, on the other.[3] Petitioners are essentially arguing that so long as the State (or its adjunct, such as A.A.) disclaims affiliation with any religion and insists that the word "God" can mean anything one wants it to mean, the State is free to exhort its citizens—using traditionally religious language—to hand their wills over to a spiritual Higher Power, to acknowledge that they are otherwise powerless, and to pray every day for the rest of their lives.

STATEMENT OF FACTS

Respondent, a prisoner who has declared himself an agnostic or atheist since 1959, brought this proceeding to be relieved from the requirement that he attend New York State's Department of Correctional Services' (DOCS) Alcohol and Substance Abuse Treatment (ASAT) program as a condition of his participation in the State prisons' Family Reunion Program. Respondent claimed that DOCS' requirement that he attend a

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[2]See, *Lee v Weisman,* 120 L.Ed.2d 467, 482-83 (1992) where Justice Kennedy, writing for the majority, stated that "[t]he suggestion that government may establish an official or civic religion as a means of avoiding the establishment of a religion with more specific creeds strikes us as a contradiction that cannot be accepted."

[3]This is so even though DOCS admitted in the courts below that references are made to God when they are "necessary to explain the Higher Power concept." (Petitioner's Appendix, page 89a)

treatment program based upon the religious Twelve Steps of Alcoholics Anonymous violates the Establishment Clause of the First Amendment to the United States Constitution.

It is not disputed that: (1) participation in the ASAT program was a prerequisite to respondent's participation in the Family Reunion Program, (2) the entire ASAT curriculum was based upon the Twelve Steps of Alcoholics Anonymous which is spiritual in nature, (3) as of June, 1993, the ASAT program provided treatment services in 62 New York State correctional facilities and 11,480 inmates were in treatment, and (4) DOCS did not provide any secular alternative to the ASAT Twelve Step program—ASAT was DOCS' exclusive addiction program throughout the State's prison system.

The religiously indoctrinating nature of the Twelve Step program is explained in the two basic Alcoholics Anonymous publications, *Twelve Steps and Twelve Traditions*, and *Alcoholics Anonymous*, commonly referred to as the "Big Book". Although neither of these publications was included in the trial court's record, *petitioners*, in their opposing briefs to New York's Appellate Division and Court of Appeals, acknowledged both of these books as authoritative by explicitly utilizing excerpts from them in their arguments. Petitioners continue to acknowledge the authority of these texts by relying upon them in their petition to this Court. Petition, pages 12, 13, 14.

Twelve Steps and Twelve Traditions ("TSTT") "presents an explicit view of the principles by which A.A. members recover and by which their Society functions." (Preface TSTT 15) "It is hoped," write the authors, "that this volume will afford all who read it a close-up view of the principles and forces which have made Alcoholics Anonymous what it is." (Preface TSTT 18) The book elaborates, chapter by chapter, upon each of the

Twelve Steps. The following are some of the statements contained in these chapters:

> Some of us won't believe in God, others can't, and still others who do believe that God exists have no faith whatever He will perform this miracle [of removing our obsession] . . . Let's look first at the case of the one who says he won't believe—the belligerent one. He is in a state of mind which can be described only as savage. (Step Two TSTT 25)

> Whether agnostic, atheist, or former believer, we can stand together on . . . Step [Two]. True humility and an open mind can lead us to faith, and every A.A. meeting is an assurance that God will restore us to sanity if we rightly relate ourselves to Him. (Step Two TSTT 33)

> Like all the remaining Steps, Step Three calls for affirmative action, for it is only by action that we can cut away the self-will which has always blocked the entry of God—or, if you like, a Higher Power—into our lives. Faith, to be sure, is necessary, but faith alone can avail nothing. We can have faith, yet keep God out of our lives. Therefore our problem now becomes just how and by what specific means shall we be able to let Him in? Step Three represents our first attempt to do this. In fact, the effectiveness of the whole A.A. program will rest upon how well and earnestly we have tried to come to a 'decision to turn our will and our lives to the care of God *as we understood Him*.' (Step Three TSTT 34-35)

> All of the Twelve Steps require sustained and personal exertion to conform to their principles and so, we trust, to God's will. (Step Three TSTT 40)

It is when we try to make our will conform with God's that we begin to use it rightly. To all of us, this was a most wonderful revelation. Our whole trouble had been the misuse of willpower. We had tried to bombard our problems with it instead of attempting to bring it into agreement with God's intention for us. To make this increasingly possible is the purpose of A.A.'s Twelve Steps, and Step Three opens the door. (Step Three TSTT 40) Step Five is 'the beginning of a true kinship with man and God.' (Step Five TSTT 57)

Many an A.A., once agnostic or atheistic, tells us that it was during this stage of Step Five that he first actually felt the presence of God. And even those who had faith already often become conscious of God as they never were before. (Step Five TSTT 62)

This feeling of being at one with God and man, this emerging from isolation through the open and honest sharing of our terrible burden of guilt, brings us to a resting place where we may prepare ourselves for the following Steps toward a full and meaningful sobriety. Step Five TSTT 62)

Of course, the often disputed question of whether God can—and will, under certain conditions—remove defects of character will be answered with a prompt affirmative by almost any A.A. member. To him, this proposition will be no theory at all; it will be just about the largest fact in his life. (Step Six TSTT 63)

[I]n a very complete and literal way, all A.A.'s have 'become entirely ready' to have God remove the mania

for alcohol from their lives. And God has proceeded to do exactly that. (Step Six TSTT 64)

If we ask, God will certainly forgive our derelictions. (Step Six TSTT 65)

So Step Six—'Were entirely ready to have God remove all these defects of character'—is A.A.'s way of stating the best possible attitude one can take in order to make a beginning on this lifetime job. (Step Six TSTT 65)

No matter how far we have progressed, desires will always be found which oppose the grace of God. (Step Six TSTT 66)

[T]he difference between 'the boys and the men' is the difference between striving for a self-determined objective and for the perfect objective which is of God. (Step Six TSTT 68)

The moment we say, 'No, never!' our minds close against the grace of God. Delay is dangerous, and rebellion may be fatal. This is the exact point at which we abandon limited objectives, and move toward God's will for us. (Step Six TSTT 69)

For just so long as we were convinced that we could live exclusively by our own individual strength and intelligence, for just that long was a working faith in a Higher Power impossible. This was true even when we believed that God existed. We could actually have earnest religious beliefs which remained barren because we were still trying to play God ourselves. As long as we placed self-reliance first, a genuine reliance upon a Higher

Power was out of the question. That basic ingredient of all humility, a desire to seek and do God's will, was missing. (Step Seven TSTT 73)

Refusing to place God first, we had deprived ourselves of His help. But now the words 'Of myself I am nothing, the Father doeth the works' began to carry bright promise and meaning. (Step Seven TSTT 75)

The Seventh Step is where we make the change in our attitude which permits us, with humility as our guide, to move out from ourselves toward others and toward God. (Step Seven TSTT 76)

Whenever our pencil falters, we can fortify and cheer ourselves by remembering what A.A. experience in this Step has meant to others. It is the beginning of the end of isolation from our fellows and from God. (Step Eight TSTT 82)

As an insurance against 'big-shot-ism' we can often check ourselves by remembering that we are today sober only by the grace of God and that any success we may be having is far more His success than ours. (Step Ten TSTT 92)

Prayer and meditation are our principal means of conscious contact with God. (Step Eleven TSTT 96)

It has been well said that 'almost the only scoffers at prayer are those who never tried it enough.' (Step Eleven TSTT 97)

We all need the light of God's reality, the nourishment of His strength, and the atmosphere of His grace. To an amazing extent the facts of A.A. life confirm this ageless truth. (Step Eleven TSTT 98)

Now and then we may be granted a glimpse of that ultimate reality which is God's kingdom. And we will be comforted and assured that our own destiny in that realm will be secure for so long as we try, however falteringly, to find and do the will of our own Creator. (Step Eleven TSTT 98)

The object of meditation "is always the same: to improve our conscious contact with God, with His grace, wisdom, and love." (Step Eleven TSTT 100)

Now what of prayer? Prayer is the raising of the heart and mind to God—and in this sense it includes meditation. How may we go about it? And how does it fit in with meditation? Prayer, as commonly understood, is a petition to God. Having opened our channel as best we can, we try to ask for those right things of which we and others are in the greatest need. And we think that the whole range of our needs is well defined by that part of Step Eleven which says: '. . . knowledge of His will for us and the power to carry that out.' A request for this fits in any part of our day. (Step Eleven TSTT 102)

. . . when making specific requests, it will be well to add to each one of them this qualification: '. . . if it be Thy will.' We ask simply that throughout the day God place in us the best understanding of His will that we can have for that day, and that we be given the grace by which we may carry it out. (Step Eleven TSTT 102)

In A.A. we have found that the actual good results of prayer are beyond question. They are matters of knowledge and experience . . . Almost any experienced A.A. will tell how his affairs have taken remarkable and unexpected turns for the better as he tried to improve his conscious contact with God . . . All of us, without exception, pass through times when we can pray only with the greatest exertion of will. Occasionally we go even further than this. We are seized with a rebellion so sickening that we simply won't pray. When these things happen we should not think too ill of ourselves. We should simply resume prayer as soon as we can, doing what we know to be good for us. (Step Eleven TSTT 104-105)

We know that God lovingly watches over us. We know that when we turn to Him, all will be well with us, here and hereafter. (Step Eleven TSTT 105)

Reviewing the first eleven Steps it is observed that "in Step Three we turned our will and our lives over to the care of God as we understood Him. For the time being, we who were atheist or agnostic discovered that our own group, or A.A. as a whole, would suffice as a higher power. . . [P]racticing these Steps, we had a spiritual awakening about which finally there was no question. Looking at those who were only beginning and still doubted themselves, the rest of us were able to see the change setting in. From great numbers of such experiences, we could predict that the doubter who still claimed that he hadn't got the 'spiritual angle,' and who still considered his well-loved A.A. group the higher power, would presently love God and call Him by name. (Step Twelve TSTT 107-109)

Practically every A.A. member declares that no satisfaction has been deeper and no joy greater than in a Twelfth Step job well done. To watch the eyes of men and women open with wonder as they move from darkness into light, to see their lives quickly fill with new purpose and meaning, to see whole families reassembled, to see the alcoholic outcast received back into his community in full citizenship, and above all to watch these people awaken to the presence of a loving God in their lives —these things are the substance of what we receive as we carry A.A.'s message to the next alcoholic. (Step Twelve TSTT 110)

When we developed still more, we discovered the best possible source of emotional stability to be God himself. We found that dependence upon His perfect justice, forgiveness, and love was healthy, and that it would work where nothing else would. (Step Twelve TSTT 116)

Service, gladly rendered, obligations squarely met, troubles well accepted or solved with God's help, the knowledge that at home or in the world outside we are partners in a common effort, the well-understood fact that in God's sight all human beings are important, the proof that love freely given surely brings a full return, the certainty that we are no longer isolated and alone in self-constructed prisons, the surety that we need no longer be square pegs in round holes but can fit and belong in God's scheme of things—these are the permanent and legitimate satisfactions of right living for which no amount of pomp and circumstance, no heap of material possessions, could possibly be substitutes. True ambition is not what we thought it was. True ambition

> is the deep desire to live usefully and walk humbly under the grace of God. (Step Twelve TSTT 124-125)
>
> With each passing day of our lives, may every one of us sense more deeply the inner meaning of A.A.'s simple prayer:
>
> > God grant us the serenity to accept the things we cannot change. Courage to change the things we can, And wisdom to know the difference." (Step Twelve TSTT 125)

Alcoholics Anonymous (the "Big Book") is "A.A.'s basic text" and its "central theme" is the "emphasis on a higher power". As "an all-purpose guide for anyone having problems working the Twelve Steps", the Big Book's main object is 'to enable [the reader] to find a Power greater than [himself] which will solve [his] problem," and that it is "spiritual as well as moral." (Big Book, page 45) Chapter Four of the "Big Book", entitled "We Agnostics," provides:

> . . . If, when you honestly want to, you find you cannot quit entirely, or if when drinking, you have little control over the amount you take, you are probably an alcoholic. If that be the case, you may be suffering from an illness which only a spiritual experience will conquer.
>
> To one who feels he is an atheist or agnostic such an experience seems impossible, but to continue as he is means disaster, especially if he is an alcoholic of the hopeless variety. To be doomed to an alcoholic death or to live on a spiritual basis are not always easy alternatives to face.

> But it isn't so difficult. About half our original fellowship were exactly of that type. At first some of us tried to avoid the issue, hoping against hope we were not true alcoholics. But after a while we had to face the fact that we must find a spiritual basis of life—or else. Perhaps it is going to be that way with you. But cheer up, something like half of us thought we were atheists or agnostics. Our experience shows that you need not be disconcerted.

A preliminary step in the A.A. program requires the participant to admit the existence "of a Creative Intelligence, a Spirit of the Universe underlying the totality of things. . ." (Big Book, page 46). Once this step is taken, the participant is to be possessed with a new sense of "power and direction." The program provides that "[a]t the start, this was all [the participant] needed to commence spiritual growth, to effect [his] first conscious relation with God as [he] understood Him." (Big Book, page 47) As soon as the participant can say that "he does believe, or is willing to believe, . . .[the program] emphatically assures him that he is on his way" and that a "wonderfully effective spiritual structure can be built." (Big Book, page 47)

The ASAT Program Operations Manual sets forth in detail the role that the Twelve Steps plays in the entire ASAT curriculum administered throughout the State's prison system, including respondent's prison. The Manual's statement of the ASAT "philosophy" begins:

> The 12-Step approach to recovery is a set of principles which teach an individual how to build a life based on sobriety. By working the 12 suggested steps, a person achieves a clear, honest view of relationships with others and a realistic understanding of himself/herself. The 12

> Steps of A.A. act as a guide which provide the tools to build a new way of life without the use of alcohol and/or drugs, one day at a time. An outline of these steps is provided in the ASAT Curriculum, Attachment E.[4]

(ASAT Program Operations Manual, page 6—Respondent's Appendix, page 2a)

Section VIII of the ASAT Manual, entitled, "Program Concept", describes the "Treatment Services". Under the subheading, "Alcohol and Drug Education and Counseling", there appears the following:

> ASAT staff will develop a curriculum reflecting week, topic, and educational information that will be delivered. Audio/visual material, lectures, and group discussions will be used. *The curriculum will be based on the "Twelve Step" approach to recovery.*

(ASAT Program Operations Manual, page 25—Respondent's Appendix, page 4a, emphasis added)

DOCS' statement of the ASAT "Goals and Objectives" begins by setting forth its "Mission Statement" which includes focusing on the prisoner's continued participation in self-help groups based on the Twelve-Step approach. (ASAT Program Operations Manual, page 4—Respondent's Appendix, page 1a) The Manual states that weekly participation in self-help groups such as A.A. is mandatory in the formal ASAT program. (ASAT Program Operations Manual, page 27—Respondent's Appendix,

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[4]The "ASAT Program Curriculum" ("Attachment E" of the Manual) outlines *all* of the Twelve Steps.

page 6a) Under the Manual's "Overview of the Self-Help Programs" there is a section which reads, "Group counseling focus: Continued exploration of feelings regarding disease concept and self-help programs." Under this heading there is a list which contains, among others, the topics, "Review of the 12 steps", "what it means to work the steps", "Treatment emphasis - Steps 1, 2, 3", and "Ongoing stepwork - disease concept". (Attachment "E" of the ASAT Program Operations Manual, pages 2-3—Respondent's Appendix, pages 9a)

The curriculum portion of the ASAT Manual explains that the group counseling sessions focus on such topics as "Surrender to powerlessness", "Seeking and finding your higher power", "Barriers to faith", "From fear to faith" and "Prayer and meditation". (Attachment "E" of the ASAT Program Operations Manual, pages 4-17—Respondent's Appendix, pages 10a-24a) The audio-visual aids and handouts given to ASAT participants include such titles as "Accepting Powerlessness", "What is Spirituality?", "Step Two: A Promise of Hope", "The Will of God" and "Our Father".

Thus the New York Court of Appeals had ample basis for finding that "[t]he ASAT Manual not only fails to disclaim and disassociate the prison system's drug and alcohol addiction treatment program from A.A.'s religious approach to combating these afflictions, but actually embraces and reinforces worship in the A.A. mold." Petitioners' Appendix, page 12a. The ASAT program itself, and not just the AA self-help groups that the

participating prisoners are required to attend, is grounded in the Twelve Steps[5]—a process to sobriety that is explicitly guided by traditionally religious concepts and explicitly directed toward a conversion of the participant to a reliance upon God.

REASONS FOR DENYING THE WRIT

NEW YORK'S REQUIREMENT THAT PRISONERS PARTICIPATE IN THE TWELVE STEP PROGRAM CONSTITUTES GOVERNMENT MANDATED RELIGIOUS PRACTICE IN VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT

I

"Whether the key word is 'endorsement', 'favoritism' or 'promotion', the essential principle remains the same. The Establishment Clause at the very least prohibits government from *appearing* to take a position on questions of religious belief . . ." *County of Allegheny v American Civil Liberties Union*, 492 U.S. 573, 593-594 (1989)(emphasis added).

Petitioners' exclusive employment of its Twelve Step ASAT program, coupled with their conditioning of prison opportunities, such as conjugal visits, upon an inmate's participation in

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[5] Petitioners make a perplexing attempt to rewrite the decision below as though it only pertains to ASAT's requiring inmates to participate in AA self-help groups. Petition, page 3 n. 2. Whatever "portion of the program" might be petitioners' "focus here", and whatever might be their present "periodic review and revision" of the ASAT program, *Id.*, the fact remains that it was the ASAT program as it existed, and the fact that it was the State's exclusive treatment program, which formed the basis of the Court of Appeals' decision.

that program, makes it *appear*, "at the very least," that the State has "take[n] a position on questions of religious belief." *Id.* There is no intellectually honest way to deny this fact.[6] Indeed, the New York Court of Appeals observed that the A.A. literature "demonstrates beyond peradventure that doctrinally and as actually practiced in the 12-step methodology, adherence to the A.A. fellowship entails engagement in religious activity and religious proselytization." Petitioner's Appendix, 11a-12a. As long as the State relies exclusively upon religiously proselytizing language, the objective *appearance* of government-endorsed religiosity will be undeniable.

Even if this Court were to go so far as to accept petitioners' suggestion that words like "God" and "prayer" and "Him" and "Higher Power" and "spirituality" can be given a neutral or secular "spin" (which, of course, they really can't), the Establishment Clause would still be violated. This is because the First Amendment "forbids" even "subtle departures from neutrality," *Gillette v United States,* 401 U.S. 437, 452 (1971) . . . " *quoted in Church of Lukumi Babalu Aye v Hialeah,* 113 S.Ct. 2217, 2227 (1993), and there is nothing at all subtle about the State's departure from neutrality in this record. The religious indoctrination inherent in a departmental policy of using the Twelve Steps is not erased, or even minimized, simply by labeling it "spiritual" or "therapeutic".

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[6] Ironically, petitioners' own counselor, Robert Cunningham, admitted that a fair reading of the 12-Steps leads to the conclusion that it is religious: "Based solely on my reading of the 12 Steps as well as the other materials submitted by Mr. Griffin in support of his grievance, I concluded that the program had a religious foundation." (Cunningham Affidavit, par. 11 —Respondent's Appendix, page 27a)

II

Petitioners' heavy reliance upon A.A.'s conclusory, self-serving disclaimer that the Twelve Step process is not "religious",[7] not only has been rejected by the New York Court of Appeals, it is presently being *uniformly* rejected in the federal courts.

In *Kerr v Farrey*, 95 F.3d 472, 497-480 (7th Cir. 1996) the Seventh Circuit Court of Appeals, which stated its agreement with the Opinion below, rejected the argument that the "program escaped the 'religious' label because the twelve steps used phrases like 'God, as we understood Him,' and because the warden indicated that the concept of God could include the non-religious idea of willpower within the individual." The Seventh Circuit observed that "[a] straightforward reading of the twelve steps shows clearly that the steps are based on the monotheistic

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[7] Petitioners also suggest that because A.A. purportedly does not embrace one particular religion it does not violate the First Amendment. But even assuming that the A.A. requirement does include the principle of non-affiliation, this still would not remove it from the scope of the Establishment Clause. In *Abington v Schempp*, 374 U.S. at 216, the Supreme Court observed how it "has rejected unequivocally the contention that the Establishment Clause forbids only governmental preference of one religion over another." *Abington*, 374 U.S. at 216. See, also, *Grand Rapids School Dist. v Ball*, 473 US 373, 382, where this Court observed that the government must "maintain a course of neutrality among religions, and between religion and nonreligion. . . "

idea of a single God or Supreme Being."[8] *Id.* See, also, *O'Connor v State of Cal.*, 855 F.Supp. 303, 307-308 (C.D.Cal. 1994) which, prior to *Kerr*, drew the same conclusion that A.A., for purposes of First Amendment analysis, is not only religious, but specifically "monotheistic" in its basic principles:

> Spirituality is a central part of the Alcoholics Anonymous philosophy, and the program contains religious overtones. While A.A. is not a "religion"—various faiths may all participate without renouncing their religious convictions—a review of the "Big Book of Alcoholics Anonymous" reveals that it is founded on monotheistic principles.

The Second Circuit Court of Appeals in *Warner v Orange County Department of Probation*, 95 F.3d 202, 213 (2nd Cir. 1996), as did the Seventh Circuit in *Kerr*, expressed its agreement with the Opinion below and stated that it had "little difficulty concluding that the constitutional line was crossed" by the government's endorsement of, and requirement of participation in, the Twelve Step program. Addressing the disclaimer argument now being propounded to this Court by petitioners, and specifically that argument's reliance upon *Stafford v*

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[8] The Seventh Circuit went on to point out that the phrase "God, as we understood Him," stressed by petitioners to show the so-called flexibility of the "God" concept, really works against the State, since the phrase refers to God as "Him". *Kerr*, 95 F.3d at 480. Thus it is no longer true, as petitioners originally asserted, that no court other than the Court below has held that the 12 Steps method is religious on its face. See, Petition, 8, 10.

Harrison, 766 F.Supp. 1014 (D.Kan. 1991),[9] the Second Circuit in *Warner* stated that

> *Stafford* involved a mandatory prison-based substance abuse program, structured around the principles of A.A. The court upheld the program, arguing that A.A.'s notions of a "higher power" and "God" were sufficiently flexible and non-denominational that the program could not be said to constitute a "religion." This is a misapplication of First Amendment doctrine, which prohibits coerced participation in religious exercise of any variety for its favoritism of religion over non-religion. We decline to follow that case, which has been criticized for misreading relevant Supreme Court precedent.[10]

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[9]The *Stafford* Court, pointing to the disclaimer in the "Big Book", held that "[w]hile the spiritual nature of Alcoholics Anonymous cannot be denied, the court is not persuaded this program is a religion." 766 F.Supp. at 1016. The holding in *Jones v Smid*, (4-89-CV-20857), the unpublished 1993 Southern District of Iowa decision also cited in the instant petition, expressly adopted the reasoning in *Stafford*.

[10]In the *Warner* District Court decision, the reasoning in *Stafford* was found faulty and rejected as follows:

> The case upon which Defendant relies for the proposition that A.A. is not a religious organization, *Stafford v Harrison*, 766 F.Supp. 1014 (D.Kan. 1991), draws its legal justification from a misapplication of Justice Douglas' concurring opinion in *U.S. v. Seeger*, 380 U.S. 163 (1965). *Stafford* finds that "the belief in a Supreme Being 'cannot be sustained as a distinguishing characteristic of religion.'" *Staff rd*, 766 F.Supp. at 1017. The passage from *Seeger* cited by the *Stafford* court stands not for the proposition that reference to a Supreme Being does not make something a 'religion', but for the proposition that belief in a Supreme Being is not a

(continued...)

Stafford was also rejected in *Scarpino v Grosshiem,* 852 F.Supp. 798, 804 (S.D.Iowa 1994) which described the reliance upon A.A.'s disclaimer as "dubious."

Also refusing to follow *Stafford* and adopt the sort of selective and misleading references to the A.A. literature that can be found in the instant petition, the District Court in *O'Connor* took the following quote as revealing:

> This is the how and why of it. First of all, we had to quit playing God. It didn't work. Next, we decided that hereafter in this drama of life, God was going to be our Director. He is the Principal; we are His agents. He is the Father, and we are His children. Most good ideas are simple, and his concept was the keystone of the new and triumphant arch through which we passed to freedom . . .

O'Connor, 855 F.Supp. at 307, n. 6.

III

The primary problem with petitioners' argument is that it would guarantee the State's ability to circumvent the Establishment Clause in every challenge to state-endorsed religious

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(...continued)

prerequisite for a religion. In fact, Douglas specifically notes Hinduism and Buddhism as religions which do not include a concept of a Supreme Being. As a result, we base our analysis upon decisions of the Supreme Court rather than upon *Stafford.*

Warner v Orange County Department of Probation, 827 F.Supp. at 267.

indoctrination. If States were permitted to use traditionally religious terms simply on their claim that such terms are not to be taken literally, but as mere metaphorical tokens, then accountability under the First Amendment would be impossible. See, e.g., *Robinson v City of Edmond*, 68 F.3d 1226 (10th Cir. 1995), which rejected a request to go behind the objective[11] significance of a traditionally religious symbol. The Tenth Circuit rightly observed that an argument which would discard the objective standard "could always 'trump' the Establishment Clause." *Id.*

Petitioners' argument, with its proffered interpretation of "God" and "prayer" as state-of-the-art terms within the treatment industry, similarly asks that the objective standard be discarded and that plainly religious language not be taken at face value. At the very least, however, the First Amendment must forbid government from using language conventionally understood as religious as a tool for social engineering. Otherwise, any governmental entity, such as New York's DOCS, which has created and now operates a religiously proselytizing program, always would be able to "trump" the Establishment Clause by simply saying that when it uses the word "God" it doesn't mean God, and when it tells people to "pray to God" it really is telling them to do something non-religious.

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[11]Instead, the Tenth Circuit applied the objective standard enunciated in *County of Allegheny v American Civil Liberties Union* (492 U.S. 573) and looked "only to the average receiver of the government communication or average observer of the government action." *Robinson v City of Edmond, supra.*

This is also why petitioners' "secular purpose" argument fails. If this Court were to approve the State's exclusive endorsement of the Twelve Steps on the theory that working them is good for certain types of people because "God" has a therapeutic, non-religious significance, the variety of opportunities to "trump the Establishment Clause" would be virtually limitless. Nothing then could stop the State from requiring the working of the Twelve Steps as a condition of, say, child visitation, or public or government-regulated employment, or even a student's right to remain in public school. As the New York Court of Appeals correctly observed, "[a]dopting a balancing approach here would be unprecedented and raise serious implications beyond the prison context." Petitioner's Appendix, 26a.[12]

IV

Petitioners' effort to psychologize, and thereby secularize, the Twelve Steps—by deconstructing the words "God", "Him",

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[12]The Court of Appeals properly refused to follow *Boyd v Coughlin*, 914 F Supp 828 (N.D.N.Y 1996) which is cited at pages 10 and 11 of the instant petition. *Boyd* misused precedent by citing *O'Lone v Estate of Shabazz*, 482 U.S. 342; *Turner v Safley*, 482 U.S. 78; and *Pell v. Procunier*, 417 U.S. 817, 822-23. These are not Establishment Clause cases; they involve personal, rather than public, constitutional rights. In *O'Lone*, for example, a case involving a claim under the Free Exercise Clause, the Supreme Court held that a balancing is permitted between an inmate's personal right to engage in his religion's rituals and practices and the State's penological and administrative interests. Obviously, there are some religious practices that a prison simply cannot accommodate for reasons of security, order and economy. However, such balancing between personal freedoms and penological objectives has absolutely nothing to do with the Establishment Clause. Under the Establishment Clause, State institutional objectives may never justify State religious indoctrination.

"prayer" and "spiritual awakening" as mere metaphors—also has the effect of degrading[13] traditional religious beliefs and insulting those who hold them. This is because petitioners are telling this Court (and the citizens of New York) that the word "God" has no objective referent and that, despite one's religious convictions, "God" and "prayer" are nothing more than useful slogans in carrying out the State's therapeutic objectives.[14]

What petitioners are doing is precisely what the Establishment Clause was intended to prevent. They are perverting religious language to serve the purposes of the State.

The exhortations contained in the Twelve Steps become no less repugnant to the Establishment Clause simply because the prisoner might (theoretically) be told that he can interpret them in non-religious terms. The fact that a person might be able to maintain his atheism (or his particular form of religious conviction) in the face of indoctrination administered in A.A.'s anthropomorphic, monotheistic terms does not make his state-mandated exposure to such indoctrination constitutional. The Twelve Step requirement still violates the second and third prongs of the *Lemon v Kurtzman* (403 U.S. 602) test in that a

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[13]See, *Engel v Vitale* (370 U.S. 421), where this Court stated that a "union of government and religion tends to destroy government and degrade religion."

[14] *Compare*, Bertrand Russell, *Can Religion Cure Our Troubles?*, in *The Basic Writing of Bertrand Russell*, Egner & Dennon, Eds., Simon & Schuster, 1961, at page 600: "I can respect the men who argue that religion is true and therefore ought to be believed, but I can only feel profound moral reprobation for those who say that religion ought to be believed because it is useful, and that to ask whether it is true is a waste of time."

principal or primary effect of requiring acceptance of the A.A. doctrine advances religion, and at a minimum fosters an excessive, and unnecessary,[15] entanglement with religion.

Petitioners argue that the specific references to "God" and "Him" can somehow be ignored and that there is nothing wrong with the State methodically inducing prisoners to understand their problems in "spiritual" terms and to surrender their wills to a spiritual "Higher Power". Apart from the unintelligibility of their spiritual-but-secular "Higher Power", petitioners are making the constitutionally erroneous assumption that there is nothing wrong with the State dictating the terms in which human existence is to be understood or in asserting the existence of such entities as "a Spirit of the Universe underlying the totality of things." As this Court has made clear, matters such as "one's own concept of existence, of meaning, of the universe, and of the mystery of human life"—matters that "define the attributes of personhood"—must never be "formed under compulsion of the State." *Planned Parenthood of Southeastern Pennsylvania v. Casey,* 505 U.S. 833, 112 S.Ct. 2791, 2807 (1992).[16] A prisoner, like any other person,[17] must be permitted to maintain the integrity of his intellect, for such integrity is

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[15]The religious entanglement is "unnecessary" in the sense that the State can achieve the goal of alcohol rehabilitation without coercing individuals to practice religion. There are secular alternatives to A.A.

[16]See, also, *Lee v Weisman*, 112 S.Ct. at 2665, stating: "There is no doubt that attempts to aid religion through government coercion jeopardize freedom of conscience. Even subtle pressure diminishes the right of each individual to choose voluntarily what to believe."

[17] "A human being does not cease to be human because the human being is a prisoner of the state." *Ward v Walsh*, 1 F.3d 873, 876 (9th Cir. 1993) cert den 114 S.Ct. 1297.

essential to the preservation of human dignity and, thus, a free society.[18]

V

Petitioners miscast the holding below when they argue that the record is inadequate in that "[t]he proscription against state endorsement of religion was never meant to apply to a mere possibility that a 12-step self-help group might conduct their meetings with a religious flavor." Petition, page 19. DOCS' Establishment Clause violation does not occur solely within the confines of the mandated self-help group meetings. It is the religious foundation of the entire ASAT program, together with petitioners' exclusive endorsement of it and their coercion of respondent to participate in it, which violates the First Amendment.

As the Court below properly observed, a reading of the ASAT Manual shows that at "the heart of the [ASAT] program" is "the A.A. Twelve Step manifesto itself and inmate participation in the group sessions conducted by A.A. and N.A. volunteers utilizing the A.A. modus operandi." Petitioner's Appendix, 9a. The ASAT Manual was created by the State, not A.A. It is the State, not A.A. volunteers, that has been directing inmates to attend counseling where the "focus" is "Surrender to powerlessness", "Seeking and finding your higher power", "Barriers to faith", "From fear to faith" and "Prayer and meditation". It is the State which has inmates listen to audio tapes such as "Excuses,

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[18] "Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. * * * It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to the followers of the orthodox faiths." *Board of Educ. v Barnette*, 319 U.S. 624, 640-642.

Honesty, Humility, Spiritual Side" and "The Will of God", and to watch video tapes such as "Our Father".

Coerced[19] participation in a program based upon the Twelve Steps is considerably more than mere "exposure to religious ideas" (Petition, page 7) or the "mere use of the word 'God'", as petitioners have chosen to downplay it (Petition, page 7). It is overt religious indoctrination.[20] To analogize it to the *Marsh v Chambers* (463 U.S. 783) chaplain's prayer (Petition, page 16), and to distinguish *Lee v Weisman* (505 U.S. 577) on the theory that adult inmates are not "susceptible" children (Petition, page 16), ignores the fact that the very premise of the ASAT program is that the participant *is* susceptible. Otherwise, the program makes no sense at all.

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[19] The fact that respondent had the option of forgoing participation in the Family Reunion Program is of no moment. Once the State provides such a program, it must do so in a manner that does not infringe upon constitutional rights. See, in addition to the authorities cited in the decision below, *Board of Education v Grumet*, 114 S.Ct. at 2497, where Justice Souter, expressing the view of the majority, stated that the Religion Clauses of the Constitution "all speak with one voice on this point: Absent the most unusual circumstances, one's religion ought not affect one's legal rights or duties or benefits."

[20] The insidious nature of the program's method of indoctrination comes to the fore through ASAT Counselor Cohen's remark that "the resistance displayed by [respondent] is a typical symptom of addiction, requiring treatment." (Petitioners' Appendix, page 91a) Cohen's assumption that respondent is "an inmate in denial," and her warning that "[w]e must be careful to prevent inmates from believing they can change the system in order to avoid changing themselves," provide a vivid picture of what respondent, and other prisoners, are being subjected to during the A.A. meetings they are forced to attend.

In *Engel v Vitale,* 370 U.S. 421 (1962) this Court held that New York's *recommendation* to the local school boards that they adopt the practice of daily prayer[21] violated the Establishment Clause: "We think that by using its public school system to encourage recitation of the Regent's prayer, the State of New York has adopted a practice wholly inconsistent with the Establishment Clause." *Engel,* 370 U.S. at 424. It is equally clear that by using its prison system to encourage working the Twelve Steps, without providing a secular alternative, the State of New York again adopted a practice wholly inconsistent with the Establishment Clause.

CONCLUSION

The psychological pressure put upon respondent to accept the A.A. beliefs is the very sort of direct, overt compulsion to reject his atheism (or agnosticism) which the drafters of the First Amendment found to be intolerable. Respondent submits that, for purposes of finding an Establishment Clause violation, it is sufficient that the program he is being required to participate in is built upon a "spiritual" foundation described in theistic terms —a fact which respondents do not dispute.

The government involvement with religious activity in this case resulted in state-sponsored and state-mandated religious exercise. Petitioners used the threat of withholding an institutional program to force inmates to participate in the Twelve Step program. They attempted to indoctrinate inmates to "[make] a decision to turn [their] will[s] and [their] lives over to the care of God", to "admit to God . . . the exact nature of [their]

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[21] "This daily procedure was adopted on the recommendation of the State Board of Regents." *Engel,* 370 U.S. at 422.

wrongs", to be "entirely ready to have God remove all these defects of character", to [h]umbly [ask] Him to remove all of their shortcomings, to seek "through prayer and meditation to improve [their] conscious contact[s] with God", as they underst[an]d Him, praying only for knowledge of His will for [them] and the power to carry that out", and "[h]aving had a spiritual awakening as a result of these steps," to try "to carry this message to alcoholics, and to practice these principles in all their affairs." (The Twelve Steps, Steps 3, 5, 6, 7, 11 & 12) All this was imposed under the threat that if they refused to submit, they would not receive the benefit of the Family Reunion Program. This constitutes a glaring, ongoing violation of the constitutional prohibitions against promoting religion and the excessive entanglement between church and state.

Accordingly, the petition should be denied.

Dated: Middletown, New York
November 22, 1996

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APPENDIX A—Portions of ASAT Program Operations Manual

New York State Department of Correctional Services

ALCOHOL AND SUBSTANCE ABUSE TREATMENT (ASAT) PROGRAM OPERATIONS MANUAL

July 1991

(4) III. GOALS AND OBJECTIVES

A. Mission Statement

To prepare chemically dependent inmates for return to the community and to reduce recidivism, the Department of Correctional Services ASAT Program assists participants by providing education and counseling focused on continued abstinence from all mood altering substances and participation in self-help groups based on the "Twelve-Step" approach.

B. Performance Goals

1. Identify in reception centers those inmates demonstrating a need for alcohol and substance abuse treatment services through a standardized alcohol and substance abuse classification procedure.

2. Provide orientation to the general inmate population, sensitizing inmates to the problems of alcohol and substance abuse.

3. Develop individualized treatment plans through which the inmate's needs are assessed and treatment goals are established; regularly evaluate progress in treatment.

4. Provide educational seminars through the use of audio/visual aids, lectures and discussions as well as group counseling and other appropriate supportive services.

5. Encourage the participant to actively pursue academic, vocational, and ancillary support services which will contribute to the development of appropriate skills and coping mechanisms necessary to maintain a drug-free lifestyle upon release.

6. Encourage inmate participation in self-help groups during and after formal ASAT participation.

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(6) IV. PROGRAM DESCRIPTION

A. Philosophy

1. 12-Step Approach

The 12-Step approach to recovery is a set of principles which teach an individual how to build a life based on sobriety. By working the 12 suggested steps, a person achieves a clear, honest view of relationships with others and a realistic understanding of himself/herself. The 12 steps of AA act as a guide which provide the tools to build a new way of life without the use of alcohol and/or drugs, one day at a time. An outline of these steps is provided in the ASAT Curriculum, Attachment E.

2. Behavior and Attitudinal Change

The basic treatment approach is an integrated program of education and counseling. This will assist the inmate in arriving at behavior change leading toward pro-social coping skills and productive life goals without the need for mood altering chemicals. This therapeutic approach is used by individual staff members in the context of bringing about beneficial behavior change in an inmate and leading him/her toward positive and productive goals.

One of the main foundations of the program is the ongoing building of an appropriate treatment atmosphere based on trust. A treatment atmosphere involves both staff and inmates. Communication fosters trust; trust in turn facilitates communication. The staff as individuals and as a group serve as role models and function as a team.

Another foundation of the program is individual responsibility. The individual inmate is basically responsible for whatever happens to him/her and for dealing with it. Change comes from within and change is possible. The program and staff offer conditions which will assist an inmate in bringing about change; however, the inmate is the cause of change in his/her own life.

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(25) VIII. PROGRAM CONTENT

A. Treatment Services

These activities will focus on providing the information and therapy necessary for participants to identify their addiction, understand the recovery process, and develop skills and coping mechanisms necessary to maintain commitment to a drug-free lifestyle.

1. Alcohol and Drug Education and Counseling

ASAT staff will develop a curriculum reflecting week, topic, and educational information that will be delivered. Audio/video material, lectures, and group discussions will be used. The curriculum will be based on the "Twelve Step" approach to recovery.

Attachment E includes an outline of the program curriculum that must be used.

The following educational and counseling activities will be included:

a. Audio/Video Presentations:

Tapes, films, and videos will be sued on a consistent basis to introduce the theme for each phase of the curriculum. These will illustrate various issues regarding addiction and recovery. One hour per week will be allotted for this activity. The use of audio/video material must comply with Directive #4555, "Video Production Programs and Procedure."

Audio tapes, e.g. the Hazelden tapes (Albums 1-12) may be used. Participants will listen individually or in groups to particular topics on addiction. They will complete assignments which will indicate a basic understanding of the topics explained in each tape.

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(27) 2. Family Services

Because the family is an integral part of the treatment process, family services will be an ongoing focus. Families will be strongly encouraged to participate in:

a. Orientation sessions which will outline the course of treatment recommended for the participant, and the role families or significant others play in the recovery process.

b. Seminars which sensitize families or significant others to addiction and the process for recovery.

c. Family counseling groups which will focus on individual needs and the dynamics of the interpersonal interactions which are demonstrated in the participant's particular family situation.

Times may be arranged at the convenience of the ASAT staff and the individual family. The Correction Counselor (Family Services) may assist the ASAT staff in providing these services.

B. Self-Help Group Participation (AA/NA)

ASAT is an educational and counseling experience which introduces and prepares inmates to identify chemical addiction and the process of recovery. It reinforces total abstinence and the need to participate in self-help groups. Therefore, weekly participation in self-help groups such as AA or NA is mandatory in the formal ASAT Program.

One hour of self-help group participation per week will be credited toward the ASAT Program hours requirement as noted in Section VIII-B. Self-help groups such as Gamblers Anonymous, Smokers Anonymous, etc. do not fulfill this requirement.

It should be noted that self-help groups such as AA and NA are not part of the formal ASAT Program but are an important adjunct to it. These groups must be separated from the ASAT Program and not

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(1) Attachment E

ASAT PROGRAM CURRICULUM

The following are topics that need to be covered over 26 weeks. Since ASAT is not an educational program but is therapeutic in nature, the choice of topics should depend on group make-up and related issues and not necessarily in the order described below. Segments of certain topics may be re-discussed in conjunction with new topics. Flexibility is required to ensure genuine therapy.

ASAT Orientation

ASAT Orientation should be delivered on a weekly basis to all new participants of the program.

Goal: To ensure a complete understanding of the program; how it works, expectations regarding behaviors, the treatment process, discharge criteria. Group process begins.

Group counseling focus: Getting to know each other

Lecture: Group Dynamics

- Describe and discuss overall program to include goals, expectations, physical plant
- Review schedule
- Review of rules (facility and ASAT); discharge criteria and process will be clearly defined sign
- Review of tools
- Review of "chain of command"
- Assignment of house jobs
- Orientation to group counseling; distribute group rules

Suggested Video: How To Sabotage Your Treatment
Continued Acts of Sabotage

Suggested Handout: How To Get The Most Out Of Group Therapy—Hazelden

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(2) Overview of Addiction

Goal: To assist the inmate to understand and personalize the disease concept in relation to their personal drug and alcohol history.

Group counseling focus: Begin personal review of drug and alcohol history

Lecture: Psychopharmacology—Overview of the physiological effects of depressants (including alcohol), stimulants, narcotics, hallucinogens. Emphasis on crack/cocaine.

- Treatment approaches
- Disease concept—need for total abstinence
- Signs and symptoms
- Review of progression
- Cross-addiction, dual addiction, substitution
- Synergy
- Other compulsive behaviors—power-based—sex, anorexia, bulimia, exercise, gambling, spending

Suggested Video: Brother Earl's Street Smart Series
"Street Talk"

Suggested Video: My Fifth Superbowl, Carl Eller
The Disease of Alcoholism,
David Ohlmes

Suggested Handout: "CD-The Disease", Jellinek Chart
Alcoholism/Addiction Checklist
A Look at Cross-Addiction
The Promises of Sobriety

Suggested Audio: Action, Alcoholism
Sin or Disease?

Overview of Self-Help Programs

Goal: Both the structure and function of self-help programs and its relationship to the disease model will be explored.

Group counseling focus: Continued exploration of feelings regarding disease concept and self-help programs.

(3)— Purpose and function—support, growth, change of lifestyle and belonging
— Review of various programs and their focus
— Review of the 12 steps
— What it means to work the steps
— Treatment emphasis—Steps 1,2,3
— Ongoing step work—disease concept
— Can you commit to yourself?
— Program tools—sponsorship, slogan, meetings
— Types of meetings
— "Model meeting" using outside speakers

Suggested Video: Earnie Larsen Series:
Working a Program

Suggested Handout: The Twelve Steps

(4)

BARRIERS TO SURRENDER

Step One

We admitted we were powerless over our addictions that our lives had become unmanageable

Goal: To understand and identify denial.

Group counseling focus: Utilize the group to identify denial. Group will begin to understand the concept of "responsible concern."

— Compliance vs. surrender
— Honesty/motives and feelings
— Denial: unconscious and necessary
— The many faces of denial: types and reasons
— Understanding the process: facing grief

Suggested Video: Brother Earl's Street Smart Series
"What Problem?"

Suggested Handout: Dealing with Denial—Hazelden
Step-One Worksheet—Hazelden
Alcoholism: A Merry-Go-Round Named Denial—Hazelden
Changing Faulty Thinking Hazelden
Grief: A Basic Reaction of Alcoholism—Hazelden

Step One Continued

We admitted we were powerless over our addictions that our lives had become unmanageable

Goal: To assist in understanding the paradox of willpower in relation to continued use. Personal identification of the first step as relinquishing control—admitting loss of control.

Group counseling focus: To assist the inmate in identifying personal beliefs about control of chemicals and to begin to identify the paradox of recovery.

(5)— Total abstinence from mood altering substances
— Discussion of powerlessness—disease of will
— Power and control—avoidance for continued use
— Loss of control
— Surrender to powerlessness
— Acceptance of Disease
— Feelings
— From powerlessness to empowerment
— Identifying unmanageability

Suggested Video: Earnie Larsen: Recovery, Part I

Suggested Handout: Step-One Worksheet—Hazelden
Accepting Powerlessness—Hazelden

Suggested Audio: Weakness in Strength—Hazelden

Step Two

Came to believe that a power greater than ourselves could restore us to sanity

Goal: To explore issues of higher power and trust as it relates to surrender.

Group counseling focus: Personal examination of beliefs, feelings and attitudes related to spirituality.

— Surrendering control to WHAT? **Trust**
— Seeking and finding your higher power
— AA and NA as a higher power
— Willingness
— Spirituality vs. religion
— Defining "insane" behavior and attitudes

Suggested Video: Earnie Larsen: Seeking and Finding Your Higher Power

Suggested Handout: What is Spirituality?
Step Two: A Promise of Hope

Suggested Audio: Excuses, Honesty, Humility, Spiritual Side—Hazelden
The Will of God—Hazelden

(6) **Step Three**

Made a decision to turn our will and our lives over to the care of God, as we understood God

Goal: To explore the concepts and barriers in accepting a power beyond self. Exploration of self-centeredness.

Group counseling focus: To explore issues of fear (feelings) and its relationship to chemical use.

— The action step—making a change
— Barriers to faith
— From fear to faith
— Turning it over to the program—relinquishing control
— Sponsorship
— Prayer and meditation

Suggested Video: Brother Earl's Street Smart Series
"Our Father"

Steps Four and Five

Made a searching and fearless moral inventory of ourselves

Admitted to God, to ourselves and to another human being the exact nature of our wrongs

Goal: To understand the purpose of self-searching as the means to which new vision is brought to life.

Group counseling focus: To explore fear, guilt, shame, anger, and resentments.

— Taking an honest look
— Risktaking—a necessary step to freedom
— How unresolved anger and resentments block recovery
— Secrets (Guilt)
— Forgiveness (as a process)
(7)— Willingness to trust in another human being as a healing process
— Trusting the trustworthy
— We don't have to do it alone—Sponsorship

Suggested Video: Earnie Larsen Series:
Unresolved Anger and How Resentment Blocks Recovery
Earnier Larsen Series:
Doing a Fourth and Fifth Step

Suggested Handout: New Fourth Step Guide—Hazelden
Grandiosity—Hazelden
Perfectionism—Hazelden

(8)

RELAPSE

Steps Six and Seven

We're entirely ready to have God remove all these defects of character

Humbly asked God to remove our shortcomings

Goal: To assist in understanding the process of relapse. To identify the need to take a daily inventory of relapse dynamics.

Group focus: Personal exploration of forms of control and the underlying feelings.

Lecture: Relapse

- Overview of the relapse process—moving into denial (control)
- Signs and Symptoms
- Use of other drugs or compulsive behaviors
- Daily relapse inventory
- Triggers—people, places, things
- Physical relapse indicators—various drugs and related withdrawal e.g. protracted withdrawal

Suggested Video: Staying Sober, Keeping Straight
Earnie Larsen Series: Relapse

Suggested Handout: Relapse And The Addict—Hazelden
The Dry Drunk Syndrome—Hazelden

(9)

OVERVIEW OF FAMILY DYNAMICS

Step Eight

Made a list of all persons we had harmed and became willing to make amends to them all

Goal: The concept of addiction as a family disease will be explored. Issues such as enabling and family roles will be discussed.

Group focus: To explore personal family dynamics.

- Explore family roles—denial
- Co-Dependency—definition and characteristics
- Keeping the family in balance—dysfunction
- Exploring the issues of shame, secrets, guilt
- Family goal—no change—keeping each other sick
- Family as a relapse dynamic
- Family recovery—treatment and self-help groups
- Tying in the steps 8 & 9—to explore issues of self-forgiveness

Suggested Video: Bradshaw On The Family (10 part)
Earnie Larsen Series: Family

Suggested Handout: Family Denial—Hazelden
Recovery For The Whole Family
Hazelden

(10) ADULT CHILDREN OF ALCOHOLISM/ADDICTION

Step Nine

Made direct amends to such people wherever possible except when to do so would injure them or others

Goal: To explore the impact of addiction on children. To understand the concept of generational alcoholism/addiction. To reduce personal blame and begin to see all family behaviors as part of the disease.

Group focus: Personal exploration of the impact of living in dysfunctional families **and** to assist the individual in indentifying generational issues.

- Impact on the children/characteristics
- Controlling someone else—co-dependency revisited
- Lack of personal boundaries
- Abandonment as a core issue—emotional and physical
- Shame-based behavior and feelings—begin to explore family violence
- Unmet dependency needs
- Who am I? Selfhood at what cost?
- Replaying the scripts in adult intimate relationships
- Exposing the family secrets
- Exploring the issue of "amends"
- ACOA Meetings—when, where?
- Al-Anon for the family
- Using ACOA issues to deny addiction

Suggested Video: Shame and Addiction, John Bradshaw
Soft Is the Heart of A Child

Suggested Handout: Guide For The Family of the Alcoholic—Hazelden
Recovery For The Whole Family
Hazelden

(11) ANGER/VIOLENCE

Step 10

Continued to take personal inventory and when we were wrong promptly admitted it

Goal: To explore issued of violence. The behavior and feeling related to violence should be tied into disease concept (control) and the first 3 steps.

Group focus: To explore personal history and beliefs about violence (to self and others)

- Exploration of feelings
- Intellect vs. feelings—staying in the here and now
- Image vs. reality (denial)
- Aggression as a control issue (power vs. powerlessness)
- Exploring underlying feelings e.g. hurt, abandonment
- What is my behavior saying about my recovery?
- Avoiding powerlessness
- Men and Rage
- Anger is OK—to review anger as another emotion (not bad or good)
- Alternatives to violence
- Values clarification seminar
- Using anger as a signal to take personal action (change what I can)

Family Violence—A Chain To Be Broken

Goal: To understand and integrate family violence, family dynamics and disease concept.

Group Counseling Focus: To explore generational family history.

— Exploration of the overt and covert issues of violence, e.g. physical and/or emotional abuse and neglect
(12)—Incest
— Powerlessness—turning to drugs and alcohol
— Rage, depression and shame—to explore denial of feelings; turning it inward
— The process of healing—dealing with the feelings; exposing family secrets
— Exploration of Post Traumatic Stress Disorder
— Violent relationships—reliving the past
— Parenting oneself—resolving the past and learning to self-care

Suggested Video: Family Violence in America:
Conspiracy of Silence
A Chain To Be Broken

(13) PARENTING

Step Eleven

Sought through prayer and meditation to improve our conscious contact with God as we understand God, praying only for knowledge of God's will and the power to carry that out

Goal: To assist in understanding the relationship between disease and its effects on the next generation. Viewing parenting in terms of recovery behavior.

Group Counseling Focus:

- Role modeling—breaking the addiction cycle
- What children need
- Exploring and healing the guilt
- How to meet the needs of the child and yourself; exploring the need to take care of yourself in order to take care of others; boundaries
- The importance of going to meetings and having a support group
- Discipline/consistency
- Limit-setting with love (detachment)—how not to enable your child.
- Teaching accountability
- Nutrition
- Fetal Alcohol Syndrome

Suggested Video: Coming From The Storm (3 part)

Suggested Handout: Fetal Alcohol Syndrome (DAAA)

(14)

SEX AND SEXUALITY

Goal: To explore sex, sexuality, role definition and its relationship to addiction.

Group counseling focus: To explore and define the various roles related to being male and female and its relationship to addiction. To assist in redefining self to enhance recovery.

- Healing the wounds of incest
- What does it mean to be a man? Old tapes, new ideas
- The impact of addiction on sexuality
- Being a sober man—redefining ourselves
- Sex addiction—using relationships and sex to avoid pain
- Sex and power
- To explore what it means to be alone
- The difference between sex and love
- Overview of various forms of contraception (Planned Parenthood)
- AIDS (AIDS Institute)

Suggested Video: Sex and Recovery for Females
Pride
Sex and Recovery for Men
Pride
Healing the Wounds of Incest

Suggested Handout: Sex Addiction: Denial, Acceptance, Return to Sanity

Workshop: AIDS Institute on AIDS

(15)

INTIMACY

Goal: To understand the dynamics of healthy intimacy. The individual shall begin to integrate addiction issues and ACOA issues as barriers to a healthy self and relationships.

Group counseling focus: Personal exploration of the impact of growing up in a dysfunctional family in relation to present relationships (lovers, spouses, children).

- Self-focus: the foundation of intimacy
- Learned distance
- Distance and pursuit—the dance of intimacy
- Exploring present relationships
- Exploring past relationships with a view towards establishing healthy intimacy
- The challenge of change
- Boundaries—defining self—taking risks
- Saying what we mean, meaning what we say—FAITH
- Being close—fears and barriers (Would you love me if you knew who I really was?)

Suggested Handout: Distance and Pursuer, Fogarty

(16)

AFTERCARE

Step Twelve

Having had a spiritual awakening as the result of these Steps, we tried to carry this message to others, and to practice these principles in all our affairs

Goal: To evaluate needs, priorities and develop plans.

Group counseling focus: Personal exploration of the feelings related to leaving treatment (and prison)

- Looking backwards/looking forward
- Defining needs (not wants)—recovery, shelter, employment, money, family
- Establishing priorities
- Taking responsibility
- Exploring community support—begin the process of establishing support after release. The inmate shall begin to make concrete plans and establish contacts in the community.
- Begin contact with DASH volunteers—obtaining a sponsor
- "Practice these principles in all our affairs"
- Expectations as a relapse dynamic

Review/Learning To Say Good-Bye

Closure should be addressed with each participant in the last few weeks of treatment. This should be integrated into the regular ASAT Program e.g. closure in group. Continuity of care planning may be addressed on an individual basis or in groups identified for this purpose.

Goal: ASAT participant, along with peers, will evaluate progress, identifying issues which need to be addressed.

(17)**Group Counseling Focus:** Participants will share feelings about leaving and bring closure to program, staff and participants.

— Closure and grief
— Exploring healthy ways of leaving
— Hope—becoming a whole person

APPENDIX B—Affidavit of Robert Cunningham Sworn to August 3, 1993

STATE OF NEW YORK SUPREME COURT
COUNTY OF ULSTER

IN THE MATTER OF THE APPLICATION OF

DAVID GRIFFIN, 68A0237

Petitioner,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules

AFFIDAVIT

RJI # 55-93-00981

-against-

Justice Canfield

THOMAS A. COUGHLIN III, Commissioner,
N.Y.S. Dept. of Correctional Services;
LOUIS F. MANN, Superintendent,
Shawangunk Correctional Facility,

Respondents.

STATE OF NEW YORK)
) ss.:
COUNTY OF ULSTER)

ROBERT CUNNINGHAM, being duly sworn, deposes and says:

1. I am employed as a Senior Correction Counselor at Shawangunk Correctional Facility.

2. As a Senior Correction Counselor my responsibilities include staff supervision and program coordination for a close supervision unit. In addition, I am chairperson of the Special Housing Unit Review Committee, Chairperson of the Temporary Release Program, and facility coordinator for the earned eligibility program.

3. I do not directly oversee the ASAT program at Shawangunk Correctional Facility.

4. I was one of two DOCS employees who was a member of the Inmate Grievance Resolution Committee that addressed the grievance filed by inmate David Griffin, which alleged that the ASAT program (2)violated his first amendment rights. A copy of the grievance, and the Committee's response thereto is attached hereto as Exhibit A.

5. My response to the grievance, contained in Exhibit A, states in part that "At this time the facility does not offer a substance abuse program (therapeutic) without a religious background."

6. The purpose of this affidavit is to clarify the basis for the aforementioned statement.

7. In reviewing Mr. Griffin's grievance, the members of the committee, including myself, reviewed the materials submitted by Mr. Griffin in support of his grievance.

8. Mr. Griffin attached a copy of a document which sets forth "The Twelve Steps" and "The Twelve Traditions". A copy of that document is attached hereto as Exhibit B.

9. The "twelve steps" outlined in Exhibit B, are those followed by the AA program, which is separate and distinct from the ASAT program.

10. While both programs are available to inmates at this facility, the ASAT was developed and is administered by the Department of Correctional Services, while the AA program is administered by persons associated with AA who are not employed by the Department of Correctional Services.

11. Based solely on my reading of the "twelve steps" as well as the other materials submitted by Mr. Griffin in support of his grievance, I concluded that the program had a religious foundation.

(3) 12. At that time, I did not have any independent, first hand knowledge that the ASAT program at Shawangunk Correctional Facility was conducted without a religious foundation. The ASAT program coordinator at this facility has since confirmed this to be fact.

s/Robert Cunningham
ROBERT CUNNINGHAM

Sworn to before me this
3 day of August, 1993

s/Donna M. Hunt
Notary Public

DONNA M. HUNT
Notary Public, State of New York
Registration #01HU4809238
Qualified in Orange County
Commission Expires March 30, 1994